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RECENT DECISIONS

ADMIRALTY—JURISDICTION OVER HYDRO-AEROPLANE.—The defendant's hydro-aeroplane broke from its moorings in navigable waters. The plaintiff, guardian of the plane, waded in and was struck by the propeller. He seeks to recover under the state compensation law. *Held*, for the defendant. The plane is a vessel and the case comes within the exclusive jurisdiction of admiralty. *Reinhardt v. Newport Flying Service Corp.* (1921) 232 N. Y. 115.

The test of whether a construction is a vessel under admiralty jurisdiction is its capability of navigation and the "*animus navigandi*." Hughes, *Admiralty* (2d ed. 1920) 14. A construction not navigated, and not intended for navigation, is not a vessel, although capable of navigation and floating upon navigable waters. *Cope v. Vallette Dry Dock Co.* (1887) 119 U. S. 625, 7 Sup. Ct. 336 (dry dock). A craft once a vessel but no longer intended for navigation, is not within admiralty jurisdiction although still capable of use as a vessel. *The Hendrick Hudson* (1869) 11 Fed. Cases, No. 6355 (hulk used as floating hotel). See *Olsen v. Birch & Co.* (1901) 133 Cal. 479, 483, 65 Pac. 1032. But a craft designed for navigation is a vessel even if not used solely for that purpose. *Bowers Hydraulic Dredging Co. v. Federal Contracting Co.* (D. C. 1906) 148 Fed. 290; *aff'd* (C. C. A. 1907) 153 Fed. 870 (dredge-boat). By statute a vessel is any craft used or capable of being used for transportation on water. (1886) 14 Stat. 178; (1870) 16 Stat. 170, U. S. Comp. Stat. (1916) § 3. The desire of admiralty courts being to secure a uniform admiralty law, they interpret "vessel" very broadly. See *Cope v. Vallette Dry Dock Co.*, *supra*, 629; *Charles Barnes Co. v. One Dredge Boat* (D. C. 1909) 169 Fed. 895, 896, 897. Mere movement out of waters under admiralty jurisdiction does not prevent admiralty from regaining its jurisdiction when the vessel returns into such waters. See *Waring v. Clarke* (U. S. 1847) 5 How. 441, 463, 464; *Peyroux v. Howard & Varion* (U. S. 1833) 7 Pet. 324, 342-44. A recent case is to be distinguished by the fact that an aeroplane, not a hydro-aeroplane, was involved. *The Crawford Bros. No. 2* (D. C. 1914) 215 Fed. 269. Since neither change of place nor of character prevents a craft's being subject to admiralty jurisdiction while its character is that of a vessel and while it is upon navigable waters, and since a hydro-aeroplane comes within the statutory and judicial definitions of a vessel, one of its purposes being water navigation, it seems sound to hold that a hydro-aeroplane is within the jurisdiction of admiralty, at least while on water.

BROKERS—SPECIAL CONTRACT OF EMPLOYMENT—COMMISSIONS.—The plaintiff, a broker, who contracted to sell property for the defendant under an agreement that his commission was not payable unless title passed, secured a contract for its sale. Before title passed, the defendant agreed to a cancellation because the purchaser stated he had insufficient funds to perform his agreement. In an action by the broker to secure the balance of his commission, *held*, for the defendant. *Weiner v. Infeld* (Sup. Ct. App. T. 1921) 190 N. Y. Supp. 82.

Under the ordinary contract of employment, a broker is entitled to his commission upon securing a purchaser ready and able to buy. *Holden v. Starks* (1893) 159 Mass. 503, 34 N. E. 1069. A failure to consummate the contract of sale, if due to the principal's default, is immaterial. *Hecht v. Hall* (1895) 62 Ill. App. 100. And, when a contract is made between the vendor and vendee and the passing of title is not a condition, the broker has earned his commission.